



Data protection and Online Behavioural Advertising (OBA)

EGTA ISSUE BRIEF ON INFORMATION PRIVACY

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WHY DOES IT MATTER FOR SALES HOUSES?

Why does data protection matter for sales houses? As sales houses commercialise the advertising space for TV and radio channels, new technologies affecting advertising are of utmost importance. Advertising in its new forms plays a significant role in the development of the Internet, and one comparable to traditional media; it is the business model for making (non-publicly funded) content widely available to EU citizens for little or no cost. In order to maintain this growth, processing data is vital to allow advertising to be tailored towards the consumer.

// Context

Reliable data is becoming more and more fundamental to good advertising by enabling the effective targeting of ads to those consumers most likely to be interested in a product or service. The rapid growth of digital media and the prospect of better, customised and more relevant advertising messages create not only new opportunities for consumers and advertisers but also have implications for privacy and data protection.

The proposal for a new Data Protection package - currently being reviewed at European level - includes changes to the definition of *personal* data and *consent* that raise serious issues for advertising. The advertising industry is united in its belief that the proposed changes in the draft Regulation are overly prescriptive, disproportionately focussed on the short-term and have the potential to suppress growth and innovation in the digital economy.

Online behavioural advertising (OBA) has become an increasingly powerful asset in the toolkit of pro-

fessional marketers. The practice of advertising based on users' preferences is a proven technique to engage with Internet users who have a genuine interest in particular product categories, and it will therefore often produce a higher return on investment (ROI) than other forms of advertising for brands. OBA is, therefore, potentially beneficial for both consumers and companies. The privacy debate in relation to advertising practices may shift to online data processing for ad targeting on linear TV content, as potentially facilitated by Internet enabled TV and other new technologies.

// Legislation

In March 2014, the European Parliament adopted the proposed data protection reform package with the agreed text receiving overwhelming support. The draft Regulation is being negotiated by member states at Council level.

Under the agreed Parliament text, the rules on consent are tightened and now companies wishing to process personal data would first have to obtain the **freely given, well-informed and explicit**

consent of the person concerned. Furthermore, pre-ticked boxes do not suffice and saying nothing is not the same as saying yes. However, by using pseudonymous data¹, companies are subject to fewer restrictions. For example, the draft text allows companies to process personal data and create user profiles (e.g. for marketing reasons) without individual consent, provided that the data remains pseudonymous. Under the draft text companies can also process and utilise user data without consent if it is within their “legitimate interest,” a term that gives permission to data controllers to share people’s information with “third parties.”

// egta position

Developments in the field of media and advertising (connected devices, Connected TV, online social networks etc.), including significant increases in the exchange and use of data, mean that there is a need to review and update data protection rules across Europe. Therefore egta welcomes the chance to streamline these rules, reducing the burdens on businesses and allowing broadcasters to collect and process personal data, thus permitting them to provide their services on new platforms and devices.

egta appreciates and recognises the need to update the current rules on data protection, as both citizens and businesses will benefit from the responsible use of online data, especially for OBA. For sales houses, the main concerns from a marketing perspective are the definition of personal data, the notion of consent and the definition of the age of a child, as these could have an adverse impact on the industry. For the TV/radio advertising industry, one of the foremost issues is the acknowledgement of “legitimate interest” as a legal basis for data transfers, which egta supports. Compared to

The two main contentions in the public debate on OBA are the following:

** The implementation of Article 5(3) of the e-Privacy Directive. Specifically, the correct interpretation of the concept of “appropriate consent”, to be given by users for the placement of cookies in their personal computers. Does the user’s consent need to be explicit and prior to the storage of cookies for OBA purposes (opt-in,) or can users express their consent by choosing to stop receiving cookies (opt-out), for instance via the browser’s setting as mentioned by recital 66 of the same Directive?*

** The interpretation of the notion of personal data, which varies according to the different national regulatory regimes, and its extension to cover IP addresses. Is any of the user’s information stored in cookies for OBA purposes, such as IP addresses, deemed to be personal data?*

¹ Pseudonymising data may be understood as replacing the data subject’s name and other identifying features with another identifier in order to make it impossible or extremely difficult to identify the data subject.

the initial Commission proposal, the developments made in the Parliament adopted text are an improvement, however there is much still to be done. It is imperative that the European Institutions and the member states focus on inconsistencies of application and enforcement across the EU and promote a principle-based regulatory regime which can evolve as technology develops and ensure that data is protected and privacy respected. Europe's data protection reform has the potential to be one of the most important policy achievements of the digital age – but only if a balanced and adaptable regulation is adopted.

// Self-regulation in the field

egta would like to highlight that alternatives to legislation, such as co-regulation and self-regulation, should be considered to help achieve the objectives of some of the provisions of the draft Regulation.

The main self-regulatory initiative has been the creation of the European Interactive Digital Advertising Alliance (EDAA), of which egta is a board member, founded by a European industry coalition representing advertisers, advertising agencies, the direct marketing operators, the advertising networks and media owners. The European Commission has widely supported the establishment and implementation of the EDAA.

EDAA's principal purpose is to licence the OBA icon to companies involved in targeted advertising across Europe. The icon is a consumer-facing, interactive symbol that links consumers to an online portal, www.youronlinechoices.eu, where they can find easy-to-understand information on the practice of OBA as well as a mechanism for exercising informed choice – if they so wish, consumers may "turn off" OBA by some or all companies. EDAA is governed by EU-level organisations which make up the value chain of OBA within Europe and acts to ensure consistency in the European self-regulatory approach. The EDAA's guiding principles are

laid out in the *Interactive Advertising Bureau Europe (IAB Europe) OBA Framework* and the *Best Practice Recommendation for Online Behavioural Advertising* of the European Advertising Standards Alliance (EASA).

additional egta information available upon request:

- **egta overview of the implementation of the e-privacy directive with particular focus on article 5(3).**

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